

ESTTA Tracking number: **ESTTA544393**

Filing date: **06/21/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Moximed, Inc.
Granted to Date of previous extension	06/23/2013
Address	26460 Corporate Ave., Suite 100 Hayward, CA 94545 UNITED STATES
Attorney information	Hoang-chi Truong Patent Law Works LLP 201 South Main Street, Suite 250 Salt Lake City, UT 84111 UNITED STATES trademarks@patentlawworks.net Phone:801-258-9832

Applicant Information

Application No	85681986	Publication date	12/25/2012
Opposition Filing Date	06/21/2013	Opposition Period Ends	06/23/2013
Applicant	Fortiori Design, LLC 12731 13th Street NW Spicer, MN 56288 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 2012/06/28 First Use In Commerce: 2012/07/12
All goods and services in the class are opposed, namely: Muscle oxygen monitors for athletic use

Applicant Information

Application No	85681992	Publication date	12/25/2012
Opposition Filing Date	06/21/2013	Opposition Period Ends	
Applicant	Fortiori Design, LLC 12731 13th Street NW Spicer, MN 56288 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 2012/06/28 First Use In Commerce: 2012/07/12
All goods and services in the class are opposed, namely: Muscle oxygen monitors for athletic use

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3808483	Application Date	08/27/2009
Registration Date	06/22/2010	Foreign Priority Date	NONE
Word Mark	MOXIMED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2008/08/11 First Use In Commerce: 2008/08/11 Medical devices for the treatment of osteoarthritis and trauma		

U.S. Registration No.	3716193	Application Date	04/30/2008
Registration Date	11/24/2009	Foreign Priority Date	NONE
Word Mark	MOXIMED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2009/01/08 First Use In Commerce: 2009/01/08 Printed publications, namely, books and pamphlets on the subjects of surgical techniques and training programs for orthopedic devices and osteoarthritis Class 041. First use: First Use: 2008/06/16 First Use In Commerce: 2008/06/16 Educational services and training, namely, offering seminars and classes on the subjects of surgical techniques and training programs for orthopedic devices and osteoarthritis		

Attachments	Notice of opposition - MOXY and MOXY (and design).pdf(730436 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/hoangchitruong/
Name	Hoang-chi Truong
Date	06/21/2013

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Fortiori Design, LLC
Trademark Application Serial Nos.: 85/681,986 and 85/681,992
Filed: July 19, 2012
Published: December 25, 2012
Mark: MOXY and MOXY (and design)

Opposition No.: _____

CONSOLIDATED NOTICE OF OPPOSITION

Moximed, Inc. (“Opposer”) believes that it will be damaged by registration of the trademarks MOXY and MOXY (and design), owned by Fortiori Design, LLC (“Applicant”), for the goods identified in U.S. Trademark Application Nos. 85/681,986 and 85/681,992, and hereby opposes those applications. As grounds for its opposition, Opposer alleges:

I. The Parties

1. Opposer is a Delaware corporation, with a principal place of business at 26460 Corporate Avenue, Suite 100, Hayward, California 94545.
2. On information and belief, Applicant is a Minnesota limited liability company, with a principal place of business at 12731 13th Street NW, Spicer, Minnesota 56288.

II. Applicant's Applications and Goods

3. Applicant filed its applications on July 19, 2012, under a Section 1(a) use filing basis, alleging first use of the marks anywhere since at least as early as June 28, 2012, and first use of the marks in commerce since at least as early as July 12, 2012.
4. Applicant's applications were published for opposition in the Official Gazette on December 25, 2012, for "muscle oxygen monitors for athletic use," in Class 10.

III. Opposer's Registrations and Goods and Services

5. Opposer is a leading medical devices company dedicated to improving the standard of care for patients with osteoarthritis and is investigating therapies to treat a number of affected joints. Its lead product is a knee implant system that is designed to absorb some of the force overload normally supported by the knee joint, and is designed for patients with knee osteoarthritis, including athletes.
6. Opposer owns U.S. Trademark Registration No. 3,808,483 for the mark MOXIMED for "medical devices for the treatment of osteoarthritis and trauma," in International Class 10. Opposer filed this application on August 27, 2009, under a Section 1(b) intent-to-use filing basis, later submitting a Statement of Use claiming first use of the mark anywhere and first use of the mark in commerce in connection with the goods since at least as early as August 11, 2008.

Opposer also owns U.S. Trademark Registration No. 3,716,193 for the mark MOXIMED for "printed publications, namely, books and pamphlets on the subjects of surgical techniques and training programs for orthopedic devices and osteoarthritis," in International Class 16, and "educational services and training, namely, offering seminars and classes on the subjects of surgical techniques and training programs for orthopedic devices and osteoarthritis," in International Class 41. Opposer filed this application on April 30, 2008, under a Section 1(b) intent-to-use filing basis, later submitting a Statement of Use claiming first use of the mark anywhere and first use of the mark in commerce in connection with the goods in Class 16 since at least as early as January 8, 2009, and first use of the mark anywhere and first use of the mark in commerce in connection with the services in Class 41 since at least as early as June 16, 2008.

Attached as Exhibit A hereto are copies of Opposer's registrations and informational excerpts about the registrations from the U.S. Patent and Trademark Office online database.

IV. Pleading History

7. On January 22, 2013, Opposer filed requests to extend the time to oppose Applicant's applications, which were granted, resetting Opposer's deadline to file Notices of Opposition against the applications to April 24, 2013. *See* Exhibit B attached hereto.
8. On April 22, 2013, Opposer filed additional requests to extend the time to oppose Applicant's applications, with Applicant's consent. These second extension requests were also granted, resetting Opposer's deadline to file Notices of Opposition to June 23, 2013. *See* Exhibit C attached hereto.

V. Claims

9. Opposer's registrations for MOXIMED are valid and subsisting and are prima facie evidence of Opposer's exclusive right to use the mark in commerce in connection with the goods and services identified in the registrations.
10. Opposer's mark MOXIMED is distinctive of its goods and services.
11. There is no question that Opposer has priority as Opposer filed its applications for MOXIMED and used the mark prior to Applicant's filing date and alleged dates of first use of the MOXY and MOXY (and design) marks.
12. Opposer has extensively advertised and promoted its mark MOXIMED in connection with its goods and services. As a consequence, the MOXIMED mark has become well known in the medical industry to identify Opposer's goods and services. Therefore, Opposer's mark has become a valuable asset of Opposer and a principal symbol of its goodwill.
13. The parties' word marks are highly similar as Applicant's mark MOXY is similar in spelling to and identical in pronunciation to the "moxi" prefix of Opposer's mark MOXIMED. The "med" suffix in Opposer's mark is descriptive of the medical nature of Opposer's goods and services, therefore, consumers may focus on the arbitrary prefix "moxi." When consumers focus on the prefix of Opposer's mark, the parties' marks are virtually identical – MOXY and MOXI – therefore, the parties' word marks are highly similar.
14. The parties' word marks are also highly similar because they have the same commercial impression as the term "moxy" means "courage," "guts," or "nerve."
15. Applicant's goods are related to Opposer's goods and/or services, with both parties marketing their goods and/or services to athletes, among other consumers.
16. Given the similarity between the parties' marks, the relatedness of the parties' goods and services, and the marketing of those goods and services to the same consumers, Opposer hereby alleges that Applicant's marks so resemble Opposer's mark, previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive, and to dilute the value and source-identifying power of Opposer's mark, thereby, causing loss, damage, and injury to Opposer and the purchasing public.

VI. Request for Relief

17. Opposer requests that this be a consolidated opposition against Applicant's MOXY and MOXY (and design) marks because Opposer's claims against each application involve similar questions of fact and law.

18. Opposer prays that this Consolidated Notice of Opposition be sustained and that Applicant's Trademark Application Nos. 85/681,986 and 85/681,992 be denied and refused registration.

Date: June 21, 2013




Hoang-chi Truong
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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing CONSOLIDATED NOTICE OF OPPOSITION is being served upon all parties by first class mail on this 21st day of June 2013, by depositing same in the United States mail, first class postage prepaid, in an envelope addressed to:

Natalie R. Walz, Esq.
Thomsen & Nybeck, P.A.
3600 American Boulevard West, Suite 400
Bloomington, MN 55431



Hoang-chi Truong